HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting.)

(Chapter VIII Rule 32(2)(b)

Description of the case.

WPMS No. 3810/01

Vidya Ratan Gupta

Vs

Commissioner Kumaun

Division, Nainital

Approved for reporting.

Not approved for reporting

Date of decision 28.7.2006

Initial of Jude

HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 3810 of 2001 (MS)
(Old No. 21041 of 1998)

Vidya Ratan Gupta S/o Sri Jawahar Lal Gupta R/o Mohalla Badripura, Haldwani, District Nainital
..... Petitioners

Versus

1. Commissioner Kumaun Division, Nainital
2. Additional Collector (Finance and Revenue) Nainital
3. State of U.P. through Collector, Nainital

..... Respondents

Writ Petition No. 2820 of 2001 (MS)

Vidya Ratan Gupta S/o Sri Jawahar Lal Gupta R/o Mohalla Badripura, Haldwani, District Nainital
..... Petitioners

1. Commissioner Kumaun Division, Nainital
2. Additional Collector (Finance and Revenue) Nainital
3. State of U.P. through Collector, Nainital

..... Respondents

Sri Sarvesh Agarwal, Advocate for the petitioner
Standing Counsel for the respondents.

Dated: 28.7.2006

Hon'ble Rajesh Tandon, J.

Heard Sri Sarvesh Agarwal, counsel for the petitioner and Standing counsel for the respondents.

By the present writ petitions the petitioner Viodya Rattan Gupta has prayed for a writ of certiorari quashing the order dated 22.4.1998 passed by the respondent no. 1.

Briefly stated petitioner has purchased the property on 13.12.1995 by registered sale deed. The property in question is House No. 6/862 situated in Maohall Badripura, Haldwani, District Nainital. The house was purchased for Rs. 1,00,000/- and stamp of Rs. 25,665/- was paid. A notice was issued to the petitioner by respondent no. 2. The petitioner filed objection on 28.5.1997. The respondent no. 2. has requested the Tehsildar to submit his report regarding valuation of the house. Tehsildar, Haldwani submitted a report on 7.3.1996. The respondent no. 2 valued the property in question for Rs. 3,73,026/- and directed to pay deficient stamp duty of Rs.28,492/-.

Aggrieved by the said order, the petitioner has preferred a revision before the Commissioner, Kumaun Division, who dismissed the same vide order dated 22.4.1998 and confirmed the order passed by the respondent no.2.

The grievance of the petitioner is that he has not been heard at the revisional stage and no notice was served upon him and further Rules 340 and 341 of U.P. Stamp Rules have not been taken into consideration in order to consider the valuation of the property.

So far as the first point is concerned the record of the revisional court shows that the petitioner was not heard at the revisional stage.

So far as the applicability of the Stamp Rules are concerned , Rule 340 provides the rules for determining the market value of instruments and Rule 341 provides the criteria for determining the market value of the property.

The subject matter of instrument being covered under Rule 341 (iii), the same are quoted below:-

341. For the purposes of payment of stamp duty, the minimum market value of immovable property forming the subject of an instrument of conveyance, exchange, gift, settlement, award or trust, referred to in Section 47-A(1) of the Act, shall be deemed to be not less than that as arrived on the basis of the multiples given below:

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(iii) Where the subject is building-

(a) Where the building is assessed to house tax and is occupied by the owner or is wholly or partly let out to tenants—25 times the actual or assessed annual rental value, whichever is higher is higher as the case may be;

(b) where the building is not assessed to house tax and is occupied by the owner or is wholly or partly let out to tenants-25 times the actual or assumed annual rental value, whichever is higher as the case may be."

Rules 3 and 4 of the U.P. Stamp (Valuation of Property) Rules, 1997 provides the criteria for determining the market value relating to the immovable property and the same are quoted below:-

"3. ***Facts to be set forth in an instrument.*** *– In case of an instrument relating to immovable property chargeable with an ad valorem duty, the following particulars shall also be fully and truly stated in the instrument in addition to the market value of the property;-*

(1) In case of land;

(a) included in the holding of a tenure holder, as defined in the law relating to land tenures:-

(i) the Khasra number and area of each plot forming part of the subject matter of the instrument;

(ii) whether irrigated or un-irrigated and if irrigated,. the source of irrigation;

(iii) if under Cultivation whether do-fasali or otherwise;

(iv) land revenue or rent whether exempted or not and payable by such tenure holder;

(v) classification of soil, supported in case of instruments exceeding twenty thousand rupees in value, by the certified copies, or extracts from the relevant revenue records issued in accordance with law;

(vi) location (whether lies in an urban area, semi-urban area, or country side); and

(vii) minimum value fixed by the Collector of the district;"

4. Fixation of minimum rate for valuation of land, construction value of non-commercial building and minimum rate of rent and commercial building.-

(1) The Collector of the district shall biennically, as far as minimum value per acre/per square metre of land, the minimum value per square meter of construction of non-commercial building and the minimum monthly rent per square meter of commercial building, situated in different parts of the district taking into consideration the following facts-

(a) in case of land-

(i) classification of soil;

(ii) availability irrigation facility;

(iii) proximity to road, market, bus-station, railway station, factories, educational institutions, hospitals and government officers; and

(iv) location with reference to its situation in urban area, semi-urban area or countryside."

In ***Ramesh Chandra Bansal Vs. District Magistrate/Collector Ghaziabad 1999 (90) RD 499,*** the matter came up before the Apex Court and their Lordships have observed that the object of the Indian Stamp Act is to calculate the proper stamp duty on an instrument or conveyance on which such duty is payable. The Apex Court has observed as under:-

"The object of the Indian Stamp Act is to collect proper stamp duty on an instrument or conveyance on which such duty is payable. This is to protect the State revenue. It is matter for common knowledge in order to escape such duty by unfair practice, many a time under-valuation of a property or owner consideration is mentioned in a sale deed. The imposition of stamp duty on sale deeds are on the actual market value of such property and not the value described in the instrument. Thus, and obligation is cast on authority to properly ascertain its true value for which he is not bound by the apparent tenor of the instrument. He has to truly decide the real nature of the transaction and value of such property. For this, Act empowers an authority to charge stamp duty on the instrument presented before it for registration. The market value of a property may vary from village to village; from location to location and even may differ from the sizes of area and other relevant factors. This apart there has to be some material before such authority as to what is likely value of such property in that area. In its absence it would be very difficult for such Registering Authority to assess the valuation of such instrument. It is to give such support to the Registering

Authority the Rule 340-A is introduced. Under this Collector has to satisfy himself based on various factors mentioned therein before recording the circle rate, which would at best be the prima facie rate of that area concerned."

Thus before a document is registered the procedure is contained under section 47(A) as amended by the State of U.P. of the Indian Stamp Act, as well as the rules have to be followed.

A perusal of the order passed by the revisional Court, shows that the opportunity of hearing has not been given to the petitioner in the light of the rules as stated above.

In view of the above, the matter is sent back to the Additional District Collector with the direction to decide it afresh in accordance with law after affording opportunity to the parties to lead fresh evidence.

Accordingly, both writ petitions are allowed. No order as to costs.

Dated: 28.7.2006 **Rajesh Tandon, J.**

*Dhyani